

STATE OF MICHIGAN
COURT OF APPEALS

KENDOR STEEL RULE DIE, INC.,

Plaintiff-Appellant,

v

CITY OF FRASER,

Defendant-Appellee.

UNPUBLISHED

April 26, 2007

No. 273998

Macomb Circuit Court

LC No. 06-000244-CH

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Plaintiff Kendor Steel Rule Die, Inc. (Kendor Steel) appeals from a circuit court order granting summary disposition to defendant City of Fraser on plaintiff's action for a declaratory judgment requesting the court to find that defendant's nuisance ordinance did not apply to its manufacturing operations in an industrial restricted zone. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Kendor Steel has manufactured steel blanks in the City since 1980. The Kendor Steel manufacturing site is located in an industrial restricted district (IRD) under a zoning ordinance in Chapter 32, §§ 32-141 to 32-144, of the City's Code of Ordinances (Code of Ordinances).

In 2002, based on complaints by residents that Kendor Steel's manufacturing operations created excessive noise and vibration, the City prosecuted Kendor Steel for violating the nuisance ordinance in Chapter 15, §§ 15-1 to 15-11, of the Code of Ordinances. Kendor Steel was found guilty in district court. The district court issued an amended order of non-reporting probation directing Kendor Steel not to violate any criminal law of any unit of government of Michigan, and not to violate any ordinance, including any zoning ordinance of the City.

Subsequently, the district court noticed a probation violation, based on complaints by residents, that Kendor Steel's business operations were a nuisance in violation of Chapter 15. At an evidentiary hearing, Kendor Steel argued that the nuisance ordinance in Chapter 15 did not apply to its operations because the noise level regulations in Chapter 32 for business in IRDs specifically controlled its manufacturing operations and, therefore, preempted the application of Chapter 15. Kendor Steel further argued that it had complied with the zoning regulations in Chapter 32, including the noise restrictions. The district court stayed the proceedings pending the circuit court's determination whether the general nuisance provisions in Chapter 15 applied

to Kendor Steel's operations in an IRD considering that the zoning provisions in Chapter 32 for IRDs also regulated land use, including noise levels.

Kendor Steel requested a declaratory judgment in circuit court finding that Chapter 15 did not apply to its business operations in the IRD because Chapter 32 already strictly regulated its industrial operations, and prohibiting the City from prosecuting it under Chapter 15 of the Code of Ordinances. Kendor Steel moved for summary disposition; the circuit court issued an opinion and order finding that Kendor Steel was subject to both the zoning ordinance in Chapter 32 and the general nuisance ordinance in Chapter 15. The circuit court stated:

Although Sec. 32-21 specifically addresses the levels of noise allowed for businesses within the IR zoning classification, it also specifically provides that "[w]henver the provisions of any other law or chapter imposes more stringent requirements than are imposed or required by this chapter, then the provisions of such law or chapter shall govern." It is clear from the specific language contained in Sec. 32-21 that the City intended to have its most restrictive noise regulation apply to businesses zoned as IR. Sec. 32.32. Since the provisions contained in Section 15 could be more restrictive than the specific provisions contained in Sec. 32-143(5), its provisions apply to businesses within the IR district.

We review *de novo* the grant or denial of a motion for summary disposition under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW 2d 201 (1998).

The rules of statutory construction also apply to the construction of ordinances. *Ballman v Borges*, 226 Mich App 166, 167; 572 NW2d 47 (1997). The meaning of an ordinance should be ascertained from its terms and organization, and its words given their ordinary meanings. *Gross v General Motors Corp*, 448 Mich 147, 160; 528 NW2d 707 (1995). Words and phrases are given meaning by their context within the entire statute. *Farmers Ins Exchange v Farm Bureau Gen Ins Co of Michigan*, 272 Mich App 106; 724 NW2d 485 (2006); *Adams Outdoor Advertising, Inc v Canton Twp*, 269 Mich App 365; 711 NW2d 391 (2006).

Kendor Steel argues that the more specific regulations in the zoning ordinance applies to its manufacturing operations and preempts the nuisance ordinance, which is general and vague. We disagree.

As stated in the zoning ordinance in Chapter 32, § 32-142, the purpose of an IRD zoning designation is:

The IR industrial restricted district is established so as to primarily accommodate wholesale activities, warehouses and industrial operations whose external, physical effects are restricted to the lot or parcel and in no manner affect in a detrimental way any of the surrounding lots or parcels. The IR district is so structured as to permit, along with specified uses, the manufacturing, compounding, processing, packaging, assembly and/or treatment of finished or semi-finished products from previously prepared material.

Chapter 32, §§ 32-141-144, regulates the use of land zoned as an IRD. Section 32-143(5)(a)(1) precisely regulates the “maximum slow response steady sound pressure levels” for various “octave band center frequencies” and the “maximum A scale (slow response) steady sound pressure levels” within an IRD at the residential, commercial, or industrial research boundary, and between 10:00 p.m. and 7:00 a.m. The regulation does not address other aspects of noises produced in an IRD, such as the type of sound or the intensity of sound.

The nuisance ordinance in Chapter 15, § 15-1 provides:

For the purpose of this chapter, the word “nuisance” is hereby defined as any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others; or
- (2) Offends decency; or
- (3) Is offensive to the senses; or
- (4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property; or tends to depreciate the value of the property of others.

Section 15-2 provides illustrative enumerations of such nuisances, one of which concerns noises and states:

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

* * * *

- (5) All unnecessary or unauthorized noises and annoying vibrations, including animal noises[.]

The application and interpretation of these regulations in relations to themselves and to other regulations is addressed in Chapter 32, § 32-21 and § 32-22, which state:

(5)

Sec. 32-21. Application.

No building or structure, or part thereof, shall hereinafter be moved into the city, erected, constructed, reconstructed, altered or maintained, and no new use or change in use shall be made or maintained of any structure or land, or part thereof, except in conformity with the provisions of this chapter. No such building structure or use that is otherwise lawful under the terms of this chapter shall exist or be operated in such a manner as to constitute a nuisance as defined herein.

Sec. 32.22. Interpretation.

In interpreting and construing the respective provisions of this chapter, they shall be interpreted and construed to be the minimum requirements for the promotion of public health, safety, convenience, comfort, prosperity and general welfare. Wherever any provision of this chapter imposes more stringent requirements, restrictions or limitations than are imposed or required by the provisions of any other law or chapter, then the provisions of this chapter shall govern. Whenever the provisions of any other law or chapter impose more stringent requirements than are imposed or required by this chapter, then the provisions of such law or chapter shall govern.

The permitted noise level regulations in an IRD under the zoning ordinance potentially conflicts with the nuisance ordinance. Presumably, compliance with the permitted sound levels in an IRD under Chapter 32, §32-143(5)(a)(1) would not give rise to a nuisance claim under Chapter 15, §15-1, as to the noise level within an IRD. However, under Chapter 32, § 32-21, some aspect of the noise, including its permitted sound level, conceivably could give rise to a nuisance claim under Chapter 15, §15-1, because the definition of nuisance is so expansive. Under § 15-1, the noise need only injure or endanger the comfort or repose of others, offend decency, be offensive to the senses, interfere with the comfortable enjoyment of life and property, or tend to depreciate the value of others property. Chapter 15 even contemplates this potential conflict, and determines that the nuisance provision prevails. Section 15-21 states that, “[n]o . . . use that is otherwise lawful under the terms of this chapter shall exist or be operated in such a manner as to constitute a nuisance as defined herein.”

Further, § 32-22 provides, “Whenever the provisions of any other law or chapter imposes more stringent requirements than are imposed or required by this chapter, then the provisions of such law or chapter shall govern.” Although the regulation in § 143(5)(a)(1) is highly specific as to volume levels, it is not more or less stringent, per se, than the nuisance ordinance in § 15(1) because the nuisance ordinance does not specify any volume level. Rather, the nuisance ordinance may be more stringent because even the specified volume level could be a nuisance. Thus, the zoning regulations in § 143(5)(a)(1) do not control over the nuisance ordinance in § 15-1 simply because the zoning regulation is more specific—it is not necessarily more stringent.

Accordingly, the zoning ordinance for IRDs in §§ 32-141 to 32-145 does not preempt the nuisance ordinance in §§ 15-1 to 15-11, because § 32-21 specifically contemplates that even a specified use under Chapter 32 could exist or be operated “in such a manner as to constitute a nuisance.”

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello